

# Advisory Opinion

## IECDB AO 2007-10

December 11, 2007

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Dear Mr. Klinefeldt and Mr. McDermott:

This opinion is in response to your letters of February 9, 2007, and November 19, 2007, respectively, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

### FACTUAL STATEMENT:

We understand you request this opinion on behalf of the Iowa Democratic Party (IDP) and the Republican Party of Iowa (RPI). You both advise us that the state parties will be engaging in presidential caucus activities that do not include the "express advocacy" of any candidates for state or local office in Iowa. The parties are interested in soliciting and receiving contributions from insurance companies, financial institutions, and corporations for these activities. Some of this funding is currently available in the party building fund accounts.

### QUESTION:

Based on this factual situation, we understand you ask the following questions:

1. Is it permissible for the state parties to use donations from insurance companies, financial institutions, and corporations to pay for costs associated with presidential caucus activities?

2. Is it permissible for the state parties to use funds in the state party building fund accounts to pay for certain costs associated with presidential caucus activities?

OPINION:

We first note that Iowa Code section 68A.503 prohibits insurance companies, financial institutions, and corporations from contributing “any money...to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office.”<sup>1</sup> This prohibition does not apply to ballot issue initiatives.

Iowa Code section 68A.503(4)“a” also provides that this prohibition does not apply when the insurance company, financial institution, or corporation is:

“Using its funds to encourage registration of voters and participation in the political process or to public issues, provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office.”<sup>2</sup>

The Board has also adopted rule 351–4.24 that permits otherwise prohibited contributions under section 68A.503 to donate funds to the state parties for building fund activities. The history of the building fund rule is discussed in IECDB Advisory Opinion 2006-07. Without restating that history, the purpose of rule 351–4.24 was to capture public disclosure of financial transactions involving the party building funds. These transactions had been a source of confusion under federal and state campaign laws for two decades. The reason the Board regulates the building funds is that express advocacy activities take place at the buildings belonging to the state parties.

In viewing your opinion requests, it appears that you are asking the Board for guidance on how we apply section 68A.503 and rule 351–4.24 as opposed to asking us to waive rule 351–4.24 under the process set out in 351–Chapter 15. The Board is not permitted to waive a rule on its own motion.<sup>3</sup>

We view your opinion request as encompassing the following two issues:

1. What transactions for the presidential caucus may be made from building fund accounts?
2. What limitations, if any, otherwise exist on state parties using donations from insurance companies, financial institutions, and corporations for presidential caucus activities?

Rule 351–4.24 limits the use of the state party building fund accounts to “costs associated with the building.” In IECDB Advisory Opinion 2006-07, the phrase “costs associated with the building” was interpreted as including:

“3. Costs such as property taxes, furnishings, utilities, pest control, lawn care, security and trash services, lease payments of satellite offices, mortgage payments, major and minor repairs to the building, Internet and cable television services are all examples of permissible expenditures from the state party building fund. Other costs directly attributable to the maintenance, upkeep, and overhead of a state party building are also permissible.

4. The portion of computer equipment, telephones, and general office supplies that are not used for contributions as discussed above or “express advocacy” communications may be paid for through the building fund.”

In your opinion requests, you set out examples of expenses related to a presidential caucus, some of which would already be permitted under IECDB Advisory Opinion 2006-07. For those expenses that are not covered by that opinion, we do not believe they may be paid for out of the building fund.

However, the campaign laws do not prohibit the state parties from setting up a separate fund to obtain donations from insurance companies, financial institutions, and corporations to pay for costs associated with a presidential caucus so long as those donations are not used for the express advocacy of any state or local candidates. The disclosure to this Board of transactions in any separate non-express advocacy fund, except for the building fund, may not technically be required. It would be, however, in the interest of the public that such transactions be reported.

#### BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup> “Public office” is defined in Iowa Code section 68A.102(20) as meaning “any state, county, city, or school office filled by election.”

<sup>2</sup> See Iowa Code section 68A.102(14) and rule 351—4.53(1) for the definition of “express advocacy.”

<sup>3</sup> See AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board, 687 NW2d 554 (Iowa 2004) that held a state agency does not have the authority under Iowa Code section 17A.9A to waive one of its administrative rules on its own motion and may only do so when duly petitioned by another person.

